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TREASURY FOR PARODI/BLEIWEISS/CORREA
USDOC FOR 4520/ITA/MAC/ONE
NSC FOR MCDERMOTT

E.O. 12958: N/A
TAGS: [ECON](#) [EFIN](#) [KIPR](#) [PGOV](#) [LE](#)
SUBJECT: LEBANON: 2009 SPECIAL 301 REVIEW

REF: BEIRUT 99

SUMMARY

¶1. (SBU) In 2008, political and security instability in Lebanon continued to stand in the way of the ratification of pending IPR-related legislation. Most of Lebanon's IP legislation is TRIPS-compliant, with the exception of what relates to pharmaceuticals and undisclosed information. However, a new decree by the Ministry of Public Health (MOPH) is expected to prevent copycat drugs from being approved and prohibit parallel imports.

¶2. (SBU) The private sector continued to recognize the efforts of the Lebanese Internal Security Force's Cyber Crime and IP Unit in enforcing IPR. Customs, which controls the ports of entry, still needs training and resources to improve its enforcement capabilities. Cable TV operators that operated illegally have started paying for the rights to broadcast and distribute television content. Meanwhile, judges and lawyers have expressed mixed opinions on the capability of Lebanon's judiciary in enforcing IPR. They believe that the number of IPR cases filed in Lebanon per year justify the establishment of specialized IPR courts.

¶3. (SBU) Post recommends that Lebanon remain on the 301 Watch list. Although progress to enhance IPR enforcement continues to be slow, Lebanon has witnessed progress in areas such as cable piracy and pharmaceutical data protection, despite political and security instability. Parliamentary elections are scheduled for June 7. The focus of the political class on the elections, and time spent campaigning, will make it difficult for the GOL to mobilize the necessary political will to enhance IPR protection and enforcement. End Summary.

OVERALL ASSESSMENT
OF IP CLIMATE

¶4. (SBU) In 2008 Lebanon was upgraded to Watch List from Priority Watch List in the Special 301 Review. New laws and amendments are still awaiting ratification. Parliament reopened in May 2008 after it had been kept closed for 18 months during a political impasse. Copyright infringements continue to be a problem. Piracy-related losses in Lebanese copyright-based industries were valued at \$31 million in 2008, compared to \$26.8 million in 2007, according to the International Intellectual Property Alliance (IIPA). However, there was some progress in the area of data protection of pharmaceuticals

and the prohibition of parallel imports, as well as IPR enforcement by the police. Although cable piracy remains a major challenge, illegal operators have begun paying for the rights to broadcast and distribute content, and the police have improved enforcement. Customs remains in need of greater resources and training to better enforce IPR. Although the GOL has grown increasingly aware of the importance of IPR, increased focus on the upcoming June 7 parliamentary elections likely will distract political leaders and prevent progress towards implementing policies to enhance IPR protection.

¶15. (U) a number of IPR awareness campaigns took place to educate the public on the importance of IP protection in 2008. In February, the Ministry of Economy and Trade (MOET) launched a three-month campaign, funded by USAID and the American Lebanese Chamber of Commerce, advertising the importance of protecting IP. In August, the Ministry of Public Health (MOPH) launched a campaign to combat counterfeit drugs. Also, the locally-based Brand Protection Group (BPG - an NGO grouping over 20 leading local and international companies aimed at raising awareness on counterfeits) re-launched its awareness campaign.

¶16. (U) In December 2008, the Ministry of Education (MOE) announced that IPR would be the theme for its 2009 School Net Project. (Note: The School Net Project is a MOE scheme, initiated in 2002, that seeks to connect all private and public schools and libraries in a single network to facilitate teaching and learning. End note.) The initiative -- which will teach students about the consequences of IPR violation by Lebanese consumers and businesses -- is being implemented in partnership with Microsoft Lebanon, the Educational Association for IT Development (EAID), and the International Education Association (IEA) - Lebanon.

TRIPS IMPLEMENTATION

¶17. (SBU) Lebanon, an original member of the GATT, has been working towards WTO accession since 1999, and support for accession is widespread among the business community. Progress on accession continues, as the sixth working party meeting took place February 27, 2009.

¶18. (SBU) In its current form, Lebanese IPR legislation is generally adequate for WTO accession and TRIPS compliant, according to various experts we have consulted. Three new IPR laws -- on trademarks, geographical indications, and industrial design -- currently awaiting parliamentary approval are merely improvements and clarifications to existing laws, not requirements to fill gaps in current legislation, according to the head of the MEPI-funded Booz Allen Hamilton WTO Accession Project at the Ministry of Economy and Trade (MOET), Zouha Sakr. Draft amendments to the copyright law, which Sakr says are only minor changes, are also awaiting parliamentary approval.

¶19. (U) Other IPR-related treaties that have been approved by cabinet and await parliamentary approval (most since 2007) include the Paris Convention for the protection of industrial property; Madrid Agreement on false or deceptive indications of source on goods; Berne convention for the protection of literary and artistic works; Singapore trademark treaty; Nice Agreement on the international classification of goods and services for the registration of marks; Patent Cooperation Treaty and the Madrid Protocol on the registration of marks.

DATA PROTECTION

¶10. (SBU) Legislative reform mainly related to dealing with trade secrets and undisclosed information, or UI, is still necessary to bring about Lebanon's full compliance with TRIPS standards. Current UI provisions in the patent law as they apply to drug registration are ambiguous. According to members of the Pharmaceutical Research and Manufacturers of America (PhRMA), this has lead the Ministry of Public Health (MOPH) to consider as UI summaries of UI or other publicly available information in the registration process of drugs, leading to the registration of a number of copycat drugs. The fastest way to deal with this problem would be to amend the UI portion of the existing patent law. However, the MOPH is pushing for clarifications on UI to be included in a new unfair competition

law that is still in the drafting stages. The MOPH is currently waiting for comments from the WHO on the issue of UI. Passing a new law would require cabinet and parliamentary approval, as well as an implementation decree (which can take years, even after a law passes parliament) before any of the law can take effect. Private and public sector contacts have told us that the Minister of Health and persons close to him may have been delaying reform in this area, claiming they favor the ambiguity regarding UI in the current patent law.

¶11. (SBU) Nevertheless, the process of drug registration is expected to improve, according to Director General of the Ministry of Public Health (MOPH) Walid Ammar, with recent approval of Decree No. 571, on the conditions of registering, importing, marketing, and classifying pharmaceuticals. Although the decree still leaves some room for interpretation of what is or is not UI, it theoretically could stop drugs with incomplete data from being registered. The decree also prohibits (beginning in April 2009) parallel imports (or importing of goods that are produced genuinely under IP protection, but imported from a market without the authorization of the holder of the IP right), which had been allowed in Lebanon since 2002. Meanwhile, generic drugs are often registered in Lebanon and allowed in the market, with patents still pending, if they comply with Lebanese standards.

ENFORCEMENT

¶12. (SBU) The Internal Security Force's (ISF) Cyber Crime and IP Unit were established in 2006 under the Judicial Police branch. In 2008, the unit's staff increased from 33 to 43. The local NGO Lebanese Intellectual Property Association (LIPA), with a \$143,000 Department of State International Narcotics and Law Enforcement (INL) grant, is currently working on training and providing

equipment for the unit. The head of the unit, Major Elie Bitar, noted that there is increased public awareness of the unit's existence, and complaints have doubled in the past year. In 2008, 46 people were arrested for IP crimes, compared to 39 arrested for both IP and cyber crimes combined in 2007. Private and public sector contacts have expressed their general satisfaction with the ISF's efforts against IP infringers, given the unit's limited resources and the general political and security situation in the country. According to the unit, 100,000 pirated CDs/DVDs were seized in 2008, as well as 9000 books, 3500 pharmaceuticals, 3000 bottles of alcohol, 8000 cosmetics, 40 channel receivers, and three automatic industrial machines used to seal bottles of alcohol.

¶13. (SBU) Most IP infringing material is smuggled in or imported through the legitimate points of entry -- airport, seaport and land border. Seizure of counterfeit goods by customs officials takes place following a request from the respective right holders. According to Senior Customs Officer Colonel Walid Habra, counterfeit goods such as clothing, designer bags and leather items, shoes, and pharmaceuticals enter via the port, whereas smaller items such as watches are more easily smuggled through the airport. All these goods, most of which come from China, enter Lebanon using false declarations -- taking advantage of Customs' lack of sufficient scanners and manpower to search all containers at the port -- and the "nothing to declare" lane at the airport.

¶14. (SBU) As for goods entering via the land border with Syria, their easy passage is facilitated by the fact that they are given less scrutiny because they are labeled as Syrian goods, regardless of their initial country of origin, and because of the low duties imposed on Syrian goods entering Lebanon. These include counterfeit drugs from China and goods from the UAE's Jebel Ali Free Zone, a hub for counterfeits from all over Asia, according to Habra. Habra noted that in recent years tobacco counterfeits have decreased substantially.

¶15. (SBU) The Ministry of Economy and Trade's (MOET) IP Unit enforces IPR by acting upon the request of right holders or ex officio. Out of a staff of 14 full-time employees, there are no full-time inspectors, and the IP Unit must call on the assistance of the MOET's Consumer Protection inspectors to enforce IP. Observers tell us the IP Unit is understaffed, hurting its effectiveness.

¶16. (SBU) There are no specialized IPR courses at the Judiciary Institute where judges are trained at the beginning of their career, but a number of general seminars on IPR are included in the curriculum. According to a senior judge who deals with IP cases, around 382 cases were filed in Lebanon, dealing mainly with trademark issues, in 2008. This has led some judges to believe that there are enough cases to justify the establishment of specialized IPR courts, and believe that such courts would encourage people to file cases, as specialized courts would ensure faster settlement. Nonetheless, the State Prosecutor of the Cassation Court recently disagreed that specialized courts would be justified.

¶17. (SBU) Most IP cases are tried in civil commercial courts, as opposed to criminal courts where infringers could be imprisoned. Although this leads to less severe punishment for infringers, some judges believe that plaintiffs are more concerned with fines (up to \$33,000) and compensation that they could receive as reparation for the crime than they are with punishing infringers. Still, prominent IP Lawyer Walid Nasser notes that in practice, fines are mostly symbolic, courts do not usually order the destruction of counterfeit goods, and decisions in civil courts take a minimum of two years to settle. This sometimes leads lawyers to file two different lawsuits, one in a criminal and another in a civil court. Nasser noted that in 2008, a pharmacist was imprisoned for selling counterfeit products in the Bekaa region. Generally speaking, however, when it comes to IP cases, courts are slow, not all judges are well versed in IP, and political pressure on judges affects the result of some cases, Nasser said.

¶18. (SBU) The issue of cable piracy has always been linked to political interests in Lebanon, with government officials reluctant to enforce regulations and operators relying on political connections to keep them in business. However, the ISF has told us that following a series of lawsuits from major cable TV operators (including ART, Orbit, Showtime, MBC, and FTV), 90 percent of the estimated 700 local illegal cable providers in Lebanon have started paying cable TV operators for the rights to broadcast and distribute programs since 2007-2008. According to Major Bitar, this has led to an increase in monthly subscription fees to illegal cable providers. The ISF conducts raids on a daily basis to make sure local cable providers are paying their fees and have the necessary equipment for legal distribution.

NOTORIOUS MARKETS

¶19. (SBU) The sale and distribution of pirated, counterfeit, and copycat products continued to take place across Lebanon in 2008, in commercial establishments or by ubiquitous street vendors. Although most of these products are imported from Asia, notorious markets include: Beirut's southern suburbs in the Dahiya area, a Hizballah stronghold; areas in an around Tripoli in the north; some Palestinian refugee camps in Beirut, and the Bekaa border area with Syria, which is difficult for law enforcement agents to reach.

INTERNET PIRACY

¶20. (U) The cost of telecommunications in Lebanon is among the highest in the world. In May 2007 the Ministry of Telecommunications (MOT) launched ADSL internet services as a way to decrease internet piracy, and reduce high dialup fees for internet users. Yet ADSL and wireless internet connection service costs are still high compared to the region. At the time of the launching of ADSL, local media estimated that around 30 percent of all internet connections went through illegal satellite providers. According to the IIPA, internet piracy was on the rise in 2008 with increased internet penetration in Lebanon. The GOL has not taken any concrete action against internet pirates to date.

OPTICAL MEDIA PIRACY

¶21. (SBU) According to the ISF, pirated CDs and DVDs are either produced locally or imported mainly from Asia. Products are widely available in Tripoli, in the surroundings of Palestinian refugee camps (especially the Sabra camp in southern Beirut) that are off-limits to GOL security authorities, and the Bekaa Valley.

Counterfeits are widely available in the Hizballah-dominated Dahiya area in southern Beirut. According to Major Bitar, Hizballah officials have been cooperating with the police in facilitating IPR-related investigations. However, as the ISF informs Hizballah beforehand -- and information may leak while in the process of reaching the pertinent Hizballah officials -- this often makes the raid less productive.

USE/PROCUREMENT OF GOVERNMENT SOFTWARE

¶22. (U) The Office of the Minister for Administrative Reform (OMSAR) acts as the central authority for the procurement of government software and hardware. In 2004, the GOL signed an agreement with Microsoft to provide 6000 public administration computers with licensed Microsoft software at discounted prices. The three-year agreement was recently renewed for an additional three years to cover additional government computers and software.

TREATIES

¶23. (U) In November 2008, cabinet approved Lebanon's adherence to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and sent them to parliament, where they await ratification.

TRAINING

¶24. (SBU) Since 2007, post has sent over 40 judges, prosecutors, and members of various ministries to USPTO IPR training programs in the U.S. and the region. Post is currently working on securing INL funding for a training program for customs officials at the Lebanese Institute of Finance.

POLITICAL CLIMATE

¶25. (SBU) The political climate in Lebanon deteriorated from the beginning of the year until May 2008. In January 2008, riots broke out in Beirut's southern suburbs following protests against power cuts. The riots led to the death of seven civilians, with more than 19 wounded. On May 7, 2008, opposition fighters led by Hizballah blocked the road leading to Beirut International Airport and several West Beirut neighborhoods in protest over government decisions. Air traffic was suspended for approximately one week. During this time, clashes erupted between Hizballah and the Sunni and Druze forces. Some 84 people were killed and approximately 200 people were wounded before political leaders reached a deal on May 21 to end the violence and the 18-month political stalemate. Clashes later in the year between Druze and Hizballah fighters across the country and between Sunnis and Alawites in the northern part of the country led to the deaths of approximately 70 people, with 275 wounded.

¶26. (SBU) Relative political and security stability has prevailed since the Doha Agreement of May. The most important results of this were the election of a new president, the end of the 18-month sit-in by the opposition in downtown Beirut, and the opening of parliament for regular business. Nonetheless, pending legislation has been held up by the opposition speaker of parliament, who has refused to accept draft legislation sent by the previous cabinet, which the opposition considers unconstitutional. With parliamentary elections approaching in June 2009, it is unclear that IPR-related issues will be on the GOL's radar screen before the elections or the appointment of a new cabinet, not likely before late-summer.

2009 SPECIAL 301 RECOMMENDATION

¶27. (SBU) Post recommends that Lebanon remain on the Special 301 Watch List. The ISF's slow but steady work to beef up enforcement, particularly in cable piracy, as well as the cabinet's attempt to improve data protection of pharmaceuticals, demonstrate the GOL's progress on IPR in a difficult political environment. Keeping Lebanon on the Watch List will maintain pressure on the GOL to

mobilize the necessary political will to push for IPR legislation in parliament and improve enforcement.

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